

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65454; File No. SR-CBOE-2011-090]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Inactivity Fee on the CBOE Stock Exchange Fees Schedule

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Inactivity Fee on the CBOE Stock Exchange (“CBSX”) Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

CBSX imposes an inactivity fee of \$5,000 per month on any CBSX Trading

Permit Holder that trades less than an average of 100,000 shares per day over a calendar month period. CBSX imposes this fee because CBSX may only issue a finite number of Trading Permits, and when permits are occupied by users that do not engage in meaningful trading on CBSX, this could occur at the expense of a potential permit holder that might be willing to add meaningful liquidity to the CBSX marketplace.

CBSX proposes to delay the imposition of the Inactivity Fee on a CBSX Trading Permit Holder until the calendar month following the first full calendar month after the effective date of the Trading Permit. For example, if the effective date of a Trading Permit is August 15, then the Exchange may not impose the Inactivity Fee on the holder of that permit until October, since September is the first full calendar month after the Trading Permit’s effective date. Under this proposal, all new CBSX Trading Permit Holders will have at least one calendar month to connect to CBSX before they may be assessed the Inactivity Fee.<sup>3</sup> CBSX believes this grace period is appropriate because it takes approximately one month for new CBSX Trading Permit Holders to establish connectivity to CBSX before they may begin effecting transactions on CBSX. This proposal will accommodate new CBSX Trading Permit Holders during this connectivity phase in which they may be unable to trade at sufficient levels to avoid incurring the Inactivity Fee.

CBSX also proposes to provide a CBSX Trading Permit Holder that incurs the Inactivity Fee with an opportunity to have the fee withdrawn. If a CBSX Trading Permit Holder incurs the Inactivity Fee for a calendar month period but trades at least an average of 200,000 shares per day (equal to the minimum trading level for the month plus the minimum trading level for the previous month for which the fee was incurred) over the following calendar month period, then CBSX will rescind the fee for the previous calendar month period. For example, if a CBSX Trading Permit Holder trades an average of 75,000 shares per day in August and the Exchange imposes the \$5,000 Inactivity Fee on the holder, but the holder then trades an average of 250,000 shares per day in September, CBSX will rescind the Inactivity Fee for August. CBSX believes this provision is appropriate because it allows CBSX Trading Permit Holders to not be penalized for a single lower-volume month if they are able to

“make up” for the volume during the following month.

The proposed rule change will take effect on October 1, 2011.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>5</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBSX Trading Permit Holders and other persons using CBSX facilities.

The proposal to delay the imposition of the Inactivity Fee is reasonable because it provides new CBSX Trading Permit Holders with sufficient time to connect to CBSX without incurring the Inactivity Fee, during which time they are not yet able to engage in meaningful trading on CBSX. Additionally, this proposal is equitable and not unfairly discriminatory because it applies to all new CBSX Trading Permit Holders and provides each of them with at least one calendar month to connect to CBSX before being subject to the Inactivity Fee.<sup>6</sup>

The proposal to provide a CBSX Trading Permit Holder that incurs the Inactivity Fee with an opportunity to have the fee withdrawn is certainly reasonable because it creates a circumstance in which a CBSX Trading Permit Holder can avoid paying a fee. Further, this proposal is equitable and not unfairly discriminatory because it provides this opportunity to all CBSX Trading Permit Holders that incur the Inactivity Fee.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See e-mail from Jeff Dritz, Attorney, CBOE, to Steve Kuan, Special Counsel, Division of Trading and Markets, Commission, on September 30, 2011.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> See Note 3, *supra*.

other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-090 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-090. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and

copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2011-090 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65453; File No. SR-NYSE-2011-45]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending NYSE Rule 17(c)(2)(B) To Make Permanent the Pilot Program That Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the Text of NYSE Rule 17(c)(2)(A)(ii) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority

September 30, 2011.

#### I. Introduction

On August 18, 2011, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make permanent the existing pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC ("Arca Securities") in its capacity as a facility of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Rule 17(c)(2)(A)(ii) to more accurately reflect the regulatory services agreement ("RSA") between the Exchange and the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**Federal Register** on August 26, 2011.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### II. Background

Arca Securities is a broker-dealer that is an NYSE member,<sup>4</sup> and, among other things, is permitted to provide to members of NYSE Amex and NYSE Arca optional routing services to other market centers.<sup>5</sup> On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of equity orders that Arca Securities routes in its capacity as a facility of NYSE Amex and NYSE Arca on a pilot basis ending September 30, 2011.<sup>6</sup> The Exchange now seeks permanent approval of this inbound routing pilot.<sup>7</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>9</sup> which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section

<sup>3</sup> See Securities Exchange Act Release No. 65183 (August 22, 2011), 76 FR 53513 ("Notice").

<sup>4</sup> Arca Securities is owned indirectly by NYSE Euronext ("NYSE Euronext"), which also indirectly owns three registered securities exchanges—NYSE Amex LLC ("NYSE Amex"), the Exchange, and NYSE Arca, Inc. ("NYSE Arca"). Thus, Arca Securities is an affiliate of each of these exchanges.

<sup>5</sup> Arca Securities operates as a facility of NYSE Amex and NYSE Arca that provides outbound routing from NYSE Amex and NYSE Arca to other market centers, subject to certain conditions. See Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63); and 52497 (September 22, 2005), 70 FR 56949, 56952-56953 (September 29, 2005) (SR-PCX-2005-90).

<sup>6</sup> See Securities Exchange Act Release No. 64729 (June 23, 2011), 76 FR 38232 (June 29, 2011) (SR-NYSE-2011-24) ("Routing Pilot Release"). See also Notice, 76 FR at 53513, n.5 and accompanying text.

<sup>7</sup> See Notice.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).